

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN FISHER, et al.,

Plaintiffs,

v.

MAERSK LINE U.K., LTD.,

Defendant.

No. C07-1248RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the court on Plaintiffs' motion to depose Defendant's expert witness after the discovery cutoff (Dkt. # 34). On January 15, 2009, the court held a hearing via telephone to discuss the motion. As the court indicated at the conclusion of the hearing, Plaintiffs' motion is GRANTED.

**II. BACKGROUND & ANALYSIS**

The discovery cutoff in this case was January 9, 2009. At 4:56 p.m. on that day, Plaintiffs filed a motion to allow a late deposition of Defendant's expert, Dr. Walter Paul. Plaintiffs contend that because Dr. Paul's expert report will not be disclosed to the

1 Plaintiffs until January 23, 2009, and Plaintiffs cannot determine whether a deposition is  
2 necessary until after receiving the report, the court should grant Plaintiffs the opportunity  
3 to depose Dr. Paul after the close of discovery.

4 In an informal opposition furnished to the court for purposes of the telephone  
5 hearing, the Defendant argued that the Plaintiffs should not have the opportunity to  
6 depose Dr. Paul because they were not diligent in bringing this issue to the court's  
7 attention. The court's scheduling order (Dkt. # 9) required that discovery motions be  
8 noted no later than January 2, 2009. According to the Defendant, allowing a late  
9 deposition would directly contradict the court's previous ruling that the discovery  
10 deadline would not be extended for any purpose other than Dr. Paul's examination of the  
11 tag line evidence. Furthermore, the Defendant contends that Plaintiffs would not be  
12 prejudiced by the inability to depose Dr. Paul because the Defendant has elected not to  
13 depose any of Plaintiffs' experts.

14 In an informal reply furnished to the court for purposes of the telephone hearing,  
15 the Plaintiffs argue that they could not have raised this issue until after the court ruled  
16 that Dr. Paul would examine the tag line evidence. Because that issue was raised toward  
17 the end of the discovery period, and Dr. Paul's report has still not been provided to  
18 Plaintiffs, the Plaintiffs contend that their delay in raising this issue is excusable. They  
19 also point to Fed. R. Civ. P. 26(b)(4)(A), which provides that "A party may depose any  
20 person who has been identified as an expert whose opinions may be presented at trial. If  
21 Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only  
22 after the report is provided." Thus, in accordance with that rule, Plaintiffs contend that  
23 their request for a deposition after receipt of the report (due after the discovery cutoff) is  
24 reasonable.

25 Though Plaintiffs' request is untimely and undoubtedly could have been raised  
26 earlier, the court nonetheless grants the motion due to the prejudice that would result if  
27

1 Plaintiffs were not given the opportunity to depose Dr. Paul. Though the Defendant has  
2 decided not to depose Plaintiffs' experts, that tactical decision does not have any bearing  
3 on the value to the Plaintiffs of deposing Dr. Paul. As the court discussed with the parties  
4 at the hearing, Dr. Paul's deposition may be conducted via telephone. Due to the fast-  
5 approaching trial date, the parties are encouraged to schedule this deposition as quickly as  
6 possible. No further extensions or continuances of any deadlines should be expected.

7 **III. CONCLUSION**

8 For the foregoing reasons, the court GRANTS Plaintiffs' motion (Dkt. # 34).  
9

10 DATED this 15<sup>th</sup> day of January, 2009.  
11

12   
13 The Honorable Richard A. Jones  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27